

IURC RM 22-03, STRAWMAN DRAFT PROPOSED RULE – Version 4/28/22
TITLE 170 INDIANA UTILITY REGULATORY COMMISSION
170 IAC 5-5

Strawman Draft Proposed Rule
LSA Document #22-____
IURC RM #22-03

DIGEST

Amends 170 IAC 5-5-1, 170 IAC 5-5-2, 170 IAC 5-5-3, 170 IAC 5-5-4 to make various updates to definitions, add definitions for re-mark, job extension, and second notice tickets, to modify the procedural timeline for resolution of excavation damage cases, to require account information on the IURC website, and to require a publicly available penalty schedule from the UPPAC.

Adds 170 IAC 5-5-1.1, 170 IAC 5-5-1.2, 170 IAC 5-5-1.3, 170 IAC 5-5-2.1, 170 IAC 5-5-2.2, and 170 IAC 5-5-2.3 to define two full working days in which an operator shall provide location information, to specify the expiration date and time of 811 tickets, to require markings indicating the size and type of underground pipelines and infrastructure, to define compliance methods for notifying excavators under IC 8-1-26-18(k), to define the tolerance zone for round facilities, and to require positive response to excavators.

Effective 30 days after filing with the Publisher.

SECTION 1. 170 IAC 5-5-1 IS AMENDED TO READ AS FOLLOWS:

170 IAC 5-5-1 Definitions

Authority: IC 8-1-26-26, IC 8-1-26-16

Affected: IC 8-1-26

Sec. 1. (a) The definitions in ~~IC 8-1-26, where applicable, and~~ this section apply throughout this rule.

(b) “811 ticket” means a notice of excavation or demolition as described by IC 8-1-26-16.

(c) “Account” has the same meaning as set forth in IC 8-1-26-1.3.

(d) “Advisory committee” means the underground plant protection advisory committee has the same meaning as set forth in IC 8-1-26-1.5.

(e) “Association” has the same meaning as set forth in IC 8-1-26-3.

~~(b)~~**(f) “Commission” means the Indiana utility regulatory commission.**

(g) “Damage” has the same meaning as set forth in IC 8-1-26-4.

(h) “Demolish” has the same meaning as set forth in IC 8-1-26-5.

(i) “Excavate” has the same meaning as set forth in IC 8-1-26-6.

(j) “Pipeline facilities” has the same meaning as set forth in IC 8-1-26-11.2.

(k) “Other materials” as referenced by IC 8-1-26-6 includes, but is not limited to, the

following:

(1) Shrubs, trees, timber, and similar brush.

(2) Posts and fencing.

(3) Poles.

(4) **Stakes.**

(l) **“Operator” has the same meaning as set forth in IC 8-1-26-10.**

~~(m) “Pipeline safety division” means the pipeline safety division of the commission. or the pipeline safety division’s publicly noticed consultant.~~

(n) **“Job Extension ticket” means an 811 ticket that is requested to extend the expiration date of a current, unexpired dig ticket, and does not include a re-mark ticket or a second notice ticket.**

(o) **“Re-mark ticket” means an 811 ticket that is requested because the markings from the most recent dig ticket have become illegible.**

(p) **“Second notice ticket” means an 811 ticket that is requested because the markings from the most recent dig ticket:**

(1) **were not provided, or**

(2) **there is evidence of an unmarked pipeline facility in the area of the excavation or demolition.**

(q) **“Training” for purposes of IC 8-1-26-23(h)(2) means training provided by the commission, the pipeline safety division, or a person or entity approved by the commission.**

(r) **“Working day” has the same meaning as set forth in IC 8-1-26-12.**

(Indiana Utility Regulatory Commission; 170 IAC 5-5-1; filed May 25, 2011, 12:57 p.m.:

20110622-IR-170100184FRA; readopted filed Apr 11, 2017, 9:52 a.m.: 20170510-IR-170170124RFA)

SECTION 2. 170 IAC 5-5-1.1 IS ADDED AS FOLLOWS:

170 IAC 5-5-1.1 Deadline to Supply Marking Information

Authority: IC 8-1-26-26

Affected: IC 8-1-26-16, IC 8-1-26-18, IC 8-1-26-21

Sec. 1.1. After an 811 ticket is submitted, an operator shall supply the information required by IC 8-1-26-18 not later than ~~7midnight, local time; 00 a.m., eastern time, on the next working day~~ after the elapse of two full working day at the end of two (2) full working day after the ticket is submitted. ~~periods from 7:00 a.m. to 6:00 p.m.~~

(Indiana Utility Regulatory Commission; 170 IAC 5-5-1.1)

SECTION 3. 170 IAC 5-5-1.2 IS ADDED AS FOLLOWS:

170 IAC 5-5-1.2 Location and description of underground facilities

Authority: IC 8-1-26-26

Affected: IC 8-1-26-16, IC 8-1-26-18, IC 8-1-26-21

Sec. 1.2. An operator required to supply ~~at~~ location and description of the underground facilities under IC 8-1-26-18 shall, as part of the description, include the following:

(1) A written description on the ground near the underground facility or in another manner that ensures the party performing the excavation or demolition receives the description.

(2) For service lines,

(A) an indication the underground facility is a service line; and

(B) the material type of the service line.

(3) For pipeline facilities two (2) inches in diameter and larger,

(A) the diameter, and

Commented [BC1]: Our supervisors often check for markings before 7:00AM after two full working days to know if that project can proceed or if a second notice is required. I would also suggest that this rule is greater than the two full working days specified in IC 8-1-26-16. I believe that IC 8-1-26-12 is fairly straightforward in its definition of working day. “As used in this chapter, “working day” means every day except Saturday, Sunday, and state and national legal holidays.” The requested change in language also provides consistency with the proposed 170 IAC 5-5-1.3.

Commented [BC2]: This could get very difficult to read. Is there some way the information could just be communicated on the ticket?

Commented [BC3]: Do you mean all service lines or only gas service lines. We referred to lines that come off of our water mains as service lines as well. We do not have records of material types. Also sewer and water service lines are not owned by the public utility.

**(B) material type
of the facility being located.**

(4) For electric underground facilities, the voltage level of the facility being located.

(Indiana Utility Regulatory Commission; 170 IAC 5-5-1.2)

SECTION 4. 170 IAC 5-5-1.3 IS ADDED AS FOLLOWS:

170 IAC 5-5-1.3 Expiration of 811 Tickets

Authority: IC 8-1-26-26

Affected: IC 8-1-26-21, IC 8-1-26-16, IC 8-1-26-18

Sec. 1.3. (a) An 811 ticket expires at midnight, local time at the site of the excavation or demolition, twenty (20) calendar days after the date the notice is submitted to the association under IC 8-1-26-16.

(b) A person responsible for the excavation or demolition may commence work or continue work after obtaining a job extension ticket only if the following circumstances apply:

- (1) The markings from the current, unexpired 811 ticket have not become illegible;**
- (2) There is no evidence of an unmarked pipeline facility in the area of the excavation or demolition.**

(c) A job extension ticket expires at midnight, local time at the site of the excavation or demolition, twenty (20) calendar days after the date on which the job extension ticket is submitted.

(d) A person responsible for the excavation or demolition may not commence or continue work after calling in a re-mark ticket until the operators supply the information required by IC 8-1-26-18.

(Indiana Utility Regulatory Commission; 170 IAC 5-5-1.3)

SECTION 5. 170 IAC 5-5-2 IS AMENDED TO READ AS FOLLOWS:

170 IAC 5-5-2 Notification of violations of IC 8-1-26

Authority: IC 8-1-26-26

Affected: IC 8-1-26-21

Sec. 2. (a) ~~Any person or entity may~~ An operator of a pipeline facility shall report a violation ~~damage~~ by providing the pipeline safety division with written or electronic notice of the ~~violation damage~~ within 30 days of becoming aware of the damage.

(b) ~~All violations shall be reported to the commission within thirty (30) days of a person becoming aware of the circumstances constituting the violation.~~

(b) An operator of a pipeline facility shall respond to a request for information about a damage within 30 days of a request by the pipeline safety division.

(c) The pipeline safety division shall maintain, or cause to be maintained, a database of all reports provided to the pipeline safety division. *(Indiana Utility Regulatory Commission; 170 IAC 5-5-2; filed May 25, 2011, 12:57 p.m.: 20110622-IR-170100184FRA; readopted filed Apr 11, 2017, 9:52 a.m.: 20170510-IR-170170124RFA)*

Commented [BC4]: A good change to reflect the reality of the system.

SECTION 6. 170 IAC 5-5-2.1 IS ADDED AS FOLLOWS:

170 IAC 5-5-2.1 Notice of inability to provide locate information

Authority: IC 8-1-26-26

Affected: IC 8-1-26-21

Sec. 2.1. (a) The notice under IC 8-1-26-18(k) shall be provided in one of the following ways:

(1) An oral communication in real time, either in person or electronically, with the person responsible for the excavation or demolition. The operator shall also make a written record, contemporaneously at the time of the oral communication, containing at a minimum:

(A) the date and time of the communication;

(B) the name of all parties that participated in the communication; and

(C) the new date by which the operator of the pipeline facility will provide the location information as required by IC 8-1-26-18.

A voicemail message is not sufficient notice under this subsection.

(2) A signed, written agreement between the operator and the person responsible for the excavation or demolition agreeing to a rescheduled deadline by which an operator will provide the location information as required under IC 8-1-26-18.

(b) An operator of a pipeline facility that does not provide notice as specified in this section:

(1) fails to notify the person responsible for the excavation under IC 8-1-26-18(k); and

(2) if IC 8-1-26-18(h) otherwise applies, the operator is subject to the penalty specified in IC 8-1-26-18(h).

(Indiana Utility Regulatory Commission; 170 IAC 5-5-2.1)

Commented [BC5]: We would prefer only to receive this type of communication in writing.

SECTION 7. 170 IAC 5-5-2.2 IS ADDED AS FOLLOWS:

170 IAC 5-5-2.2 Clearance Zone

Authority: IC 8-1-26-26

Affected: IC 8-1-26-21

Sec. 2.2. A person for responsible for an excavation or demolition shall maintain a clearance from mechanized equipment of not less than two (2) feet from the outer limits of physical plant, including all sides of the physical plant above, below, and in a full radius surrounding the physical plant, except as described in IC 8-1-26-20, *(Indiana Utility Regulatory Commission; 170 IAC 5-5-2.2)*

Commented [BC6]: Need the caveats described in this section otherwise it is impossible to do the necessary work.

SECTION 8. 170 IAC 5-5-2.3 IS ADDED AS FOLLOWS:

170 IAC 5-5-2.3 Positive response to excavators of supplied location information

Authority: IC 8-1-26-26

Affected: IC 8-1-26-21

Sec. 2.3. (a) An operator of a pipeline facility shall provide an affirmative electronic response to the association in the manner directed by the association when the operator has provided the marking information in response to an 811 ticket.

(b) The association shall make available the operator's response under subsection (a) to the person responsible for the excavation or demolition.

(Indiana Utility Regulatory Commission; 170 IAC 5-5-2.3)

SECTION 9. 170 IAC 5-5-3 IS AMENDED TO READ AS FOLLOWS:

170 IAC 5-5-3 Process for determining violations of the underground plant protection laws and penalties

Authority: IC 8-1-26-26

Affected: IC 8-1-26

Sec. 3. (a) The pipeline safety division shall investigate alleged violations of IC 8-1-26 by requesting a written response from all known persons or entities reportedly involved in ~~the damage. an incident, whose addresses are reported or available on the internet, within sixty (60) days. The pipeline safety division shall investigate all incidents pursuant to applicable federal requirements and may investigate incidents further at its discretion.~~

(b) The pipeline safety division shall **determine whether a violation of IC 8-1-26 occurred and by whom. After making a determination of a violation, the pipeline safety division shall** forward its findings of violations of requirements provided in IC 8-1-26 to the advisory committee.

~~(e) The advisory committee will provide the person or entity accused of violating IC 8-1-26 with a copy of the pipeline safety division's summary damage report.~~

(d) The ~~advisory committee~~ **pipeline safety division** will provide the person or entity accused of violating IC 8-1-26 with notice and an opportunity to appear before the advisory committee **to provide written evidence** prior to the advisory committee making a recommendation on the summary damage report.

(e) A person or entity accused of violating IC 8-1-26 may send correspondence ~~and written evidence~~ regarding the pipeline safety division's finding of a violation to the advisory committee ~~or in lieu of appearing appear~~ at the public meeting in person **to provide the written evidence**. ~~All correspondence must be addressed to the Underground Plant Protection Advisory Committee, Indiana Utility Regulatory Commission, 101 West Washington Street, Suite 1500 E, Indianapolis, Indiana 46204.~~

(f) **The advisory committee shall use a publicly available penalty schedule when determining recommended penalties.**

(g) Upon receiving a recommendation from the advisory committee, the commission shall provide the person or entity accused of violating IC 8-1-26 with notice of the advisory committee's recommendation and provide the person or entity thirty (30) days to request a public hearing on the advisory committee's recommendation.

~~(gh) A request for a public hearing before the commission must be in writing and shall be considered filed upon receipt by the commission~~ **filed and served following the procedures in 170 IAC 1-1.1.**

(hi) If a person or entity accused of violating IC 8-1-26 does not request a public hearing, the commission ~~will may~~ act upon the advisory committee's recommendation.

(ij) All hearings before the commission regarding violations of IC 8-1-26 are subject to the commission's rules of practice and procedure.

~~(j) A person or entity found in violation of IC 8-1-26 may be required to pay a civil penalty. All civil penalties must be paid to the commission within ninety (90) days of being assessed. (Indiana Utility Regulatory Commission; 170 IAC 5-5-3; filed May 25, 2011, 12:57 p.m.: 20110622-IR-170100184FRA; readopted filed Apr 11, 2017, 9:52 a.m.: 20170510-IR-170170124RFA)~~

Commented [BC7]: Why does it strictly need to be written evidence? What about photos, videos, testimony, etc.?

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SECTION 10. 170 IAC 5-5-4 IS AMENDED TO READ AS FOLLOWS:

170 IAC 5-5-4 Underground plant protection account

Authority: IC 8-1-26-26

Affected: IC 8-1-26-18; IC 8-1-26-25

Sec. 4. (a) The commission shall administer the account.

(b) The account consists of civil penalties issued pursuant to IC 8-1-26.

(c) **The commission shall maintain a publicly available website with information about the account.**

(d) **A person may submit a request for a grant to the commission that:**

(1) complies with the purposes of the account under IC 8-1-26-24; and

(2) follows the guidelines set forth on the commission’s website.

(Indiana Utility Regulatory Commission; 170 IAC 5-5-4; filed May 25, 2011, 12:57 p.m.;

20110622-IR-170100184FRA; readopted filed Apr 11, 2017, 9:52 a.m.; 20170510-IR-170170124RFA)

1. Should the rule address spacing of paint lines and flags?

Yes, but more as a “wherever possible the spacing of paint lines and flags shall ...” This will allow more flexibility if an operator is locating in a unique location where painting or flagging at the required interval is not possible or practical.

2. Should the rule address the frequency of ongoing maintenance of the markings by the operator?

The person performing the excavation or demolition should monitor and request maintenance of the markings as needed.

3. Do stakeholders see a need to require marking standardization, perhaps by incorporating CGA best practices?

No comment

4. Should there be a maximum limit for reschedules, so that, for instance, an 811 ticket cannot be rescheduled for a date after the 811 ticket would be expired?

Yes

5. Is there a benefit to defining a separate locate process for “project” locate tickets? Is there a standardized definition of “project” tickets?

Is the intention of this question to handle situations where a company puts in multiple tickets to cover a long stretch of road for something like directional boring for a new communication line? If so, then yes a separate locate process would be appropriate. A possible definition would be multiple tickets related to a continuous excavation or a specified length. The process should include some way to help operators and excavators agree on where to start the locating process and the direction of travel.

6. Should the clearance zone requirement spell out the calculation of the size of the tolerance zone, i.e. half the diameter of the facility plus 24 inches on all sides?

That would be fine.

7. Should there be a penalty or other enforcement mechanism if an operator fails to provide positive response?

Yes

8. Other

We have experienced extreme difficulty getting other operators to get their facilities marked. This ultimately results in additional cost and diminished service to our customers. We need a compelling enforcement mechanism to get operators to locate facilities in a timely manner. Ideally, the system would penalize operators that routinely fail to mark utilities in a timely manner while still offering some flexibility to operators when there are large surges of 811 requests. For example, most operators really should have the capacity to get all of their locates done at least within a few days of a second notice. However, if something like a fiber optic boring company is doing a project and there are miles of locate requests, having the excess locator capacity to handle these all within a few days is not a good use of resources.

It would be helpful if we did not need to call 811 before shovel digging to uncover buried curb boxes to perform water shutoffs on delinquent customers. Sometimes customers like to bury the curb boxes. Also, calling 811 before pot holing with vacuum excavation for our lead service line investigation has resulted in significant delays to our investigations. Essentially, allowing some form of excavation without calling 811 may provide minimal additional risk while relieving some pressure on the 811 system.